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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

14 Amber Farmer, individually
15 and on behalf of all others similarly
16 situated,

17 *Plaintiff,*

18 v.

19 Barkbox, Inc.,

20 *Defendant.*
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Case No. 5:22-cv-01574-SSS-SHK

**JOINT REQUEST FOR
DISMISSAL WITH PREJUDICE**

Hon. Sunshine S. Sykes

1 Plaintiff Amber Farmer previously filed a notice of voluntary dismissal under
2 Federal Rule of Civil Procedure 41(a)(1)(i). The Court struck that notice and ordered
3 that any subsequent request for dismissal “address the *Diaz* factors and provide
4 information sufficient for the Court to determine whether dismissal of the case is
5 collusive or prejudicial to the putative class and whether notice to all members of the
6 putative class is required. The information should also include the terms, form, and
7 value of any settlement or consideration being paid for the dismissal, and a fully
8 executed copy of any settlement agreement.” Dkt. 60 (discussing *Diaz v. Tr. Territory*
9 *of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)). The parties provide the ordered
10 information below and jointly request that the Court dismiss Ms. Farmer’s individual
11 claims with prejudice (but without prejudice to the claims of any absent class
12 members).

13 **Background**

14 In this case, Ms. Farmer alleges on behalf of herself and a putative class that
15 Bark failed to comply with California’s Automatic Renewal law. *See* Dkt. 49 (Order
16 on Motion to Dismiss). After the Court denied Bark’s motion to dismiss and motion
17 to compel arbitration (*id.*), Bark appealed the arbitration ruling to the Ninth Circuit.
18 The Court stayed the case pending the appeal. Dkt. 58. The parties then began
19 informal discussions about resolving the case, along with mediation discussions with
20 the appointed Ninth Circuit mediator.

21 In these discussions, Bark shared with Plaintiff evidence that it would produce
22 during discovery, showing additional Automatic Renewal Law disclosures had been
23 displayed to Ms. Farmer. Ms. Farmer and her counsel were not previously aware of
24 this additional evidence. Bark also informed Plaintiff that, as a matter of customer
25 service, it was willing to refund what it charged Ms. Farmer for renewing
26 subscriptions. After evaluating the additional evidence produced by Bark, Ms. Farmer
27 decided to accept a refund from Bark and dismiss her individual case with prejudice
28 and her class claims without prejudice. The total refund was \$504.36 (the price of the

1 subscription boxes that Bark automatically shipped to Ms. Farmer). No other benefit
2 of any kind, either monetary or nonmonetary, was exchanged between the parties.
3 Ms. Farmer's counsel did not receive any fees or other payment of any kind from
4 Bark or its counsel, directly or indirectly, in connection with Ms. Farmer's lawsuit or
5 her dispute with Bark. There is no settlement agreement—this resolution was reached
6 informally via discussion between counsel.

7 ***Diaz* factors and class notice**

8 The dismissal of this case is without collusion and without prejudice to the
9 putative class. The *Diaz* factors are:

10
11 (1) class members' possible reliance on the filing of the action if they are likely
12 to know of it either because of publicity or other circumstances, (2) lack of
13 adequate time for class members to file other actions, because of a rapidly
14 approaching statute of limitations, (3) any settlement or concession of class
15 interests made by the class representative or counsel in order to further their
16 own interests.

17 *Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). These
18 factors support approving Ms. Farmer's voluntary dismissal without requiring notice
19 to the putative class. (1) The filing of this case received only limited publicity—on
20 websites that report on essentially all filed class actions, like topclassactions.com and
21 classaction.org—and the parties are not aware of any absent class members that are
22 holding off on filing on individual action due to the class action. (2) This is not a case
23 where a single event happened, years ago, and the statute of limitations is about to
24 expire for all absent class members. To the contrary, under California's four-year
25 statute of limitations for consumer protection claims, Cal. Bus. & Prof. Code
26 § 17209, any absent class member can still bring an individual case for an alleged
27 automatic renewal law violation that occurred within the last four years. In addition,
28 the statute of limitations has likely been tolled for absent class members during the
pendency of this action under *American Pipe & Construction Co. v. Utah*, 414 U.S.

1 538 (1974). And (3) Ms. Farmer made no settlement concessions that furthered her
2 own interests over those of absent class members. Ms. Farmer's class claims will be
3 dismissed without prejudice to any future claim by absent class members.

4 Under all three *Diaz* factors, classwide notice is not required. *See* Dkt. 60 at 2
5 (identifying the three factors); *Diaz* at 1409-10. (1) "[P]olicies in favor of settlement
6 support interpreting Rule 23(e) so as not to prevent settlement of individual claims
7 and dismissal of class allegations without notice, so long as representative plaintiffs
8 do not receive disproportionate recoveries and the absent class members do not suffer
9 prejudice." *Diaz* at 1409. Here, Ms. Farmer did not receive a disproportionate
10 recovery (e.g., one that dwarfed the value of her individual claims). To the contrary,
11 she simply received a refund for her individual purchases. (2) The resolution of this
12 case includes no "objectionable structural relief." *Id.* at 1409. And (3) absent class
13 members will suffer no prejudice because their claims will not be dismissed with
14 prejudice, neither party is aware of any class member who has avoided filing their
15 own claims in reliance on the pendency of this action, and there is no risk that the
16 imminent expiration of any statute of limitations will bar class members' claims. So
17 here, classwide notice is not required. *See Duran v. SPS Techs. LLC*, 2020 WL
18 7773888, at *2 (C.D. Cal. Dec. 30, 2020) (approving dismissal under *Diaz* where
19 class claims were dismissed without prejudice, there was no evidence of publicity or
20 reliance by class members, and the complaint alleged violations within the statute of
21 limitations, which would be tolled by *American Pipe* in any event); *Gutierrez v. J.M.*
22 *Distrib., Inc.*, 2020 WL 4355513, at *1 (C.D. Cal. June 3, 2020) (same); *Rodriguez v.*
23 *Nationwide Mut. Ins. Co.*, 2017 WL 7803796, at *3-4 (C.D. Cal. Nov. 16, 2017)
24 (same).

25 Accordingly, the parties jointly request that the Court dismiss Ms. Farmer's
26 claims with prejudice, without prejudice to the claims of any absent class members.
27 Each side will bear their own costs and fees.
28

1 Dated: February 14, 2024

Respectfully submitted,

2 By: /s/ Jonas Jacobson

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Attorneys for Defendant

25 SIGNATURE ATTESTATION

26 Pursuant to Local Rule 5-4.3.4, I hereby attest that all other signatories listed,
27 and on whose behalf the filing is submitted, concur in the filing's content and have
28 authorized the filing of this document.

Dated: February 14, 2024

By: /s/ Jonas Jacobson

Jonas Jacobson